

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2009-3979 CMH
Case No. ██████████
Load No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, following the Appellant's request for a hearing.

After due notice, hearings were held on ██████████, and ██████████. ██████████, an Advocate with ██████████, appeared as Authorized Representative for ██████████ (Appellant), who also appeared and testified on her own behalf. Also appearing as a witness for the Appellant was ██████████, ██████████. ██████████.

██████████ appeared on behalf of the ██████████ ██████████ an agency contracted with the Michigan Department of Community Health to provide Medicaid-funded community mental health supports and services (hereafter, 'Department'). Also appearing as witnesses for the Department were ██████████. ██████████.

ISSUE

Has the Department appropriately denied the Appellant's request for a voice-activated environmental control system?

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence presented, I find, as material fact:

1. The Appellant is Medicaid beneficiary, currently enrolled in the Habilitation and Supports Waiver, who is receiving services through ██████████. She suffers from Spinal Muscular Atrophy. (*Exhibit 1; Attachment A; p. 1 of 10*)

2. The Appellant resides in a private residence with her partner. Her support system consists of her partner, family, co-workers, church family, and others. She currently requires assistance with all independent living tasks. She uses a power wheelchair, with movable forearm supports, a hooyer lift, bath and commode chair, accessible van, and door opener. She also has a service dog to assist her with some tasks when she is alone. (*Exhibit 1; Attachment A; p. 5 of 10*)
3. According to the ██████████, Person-Centered Plan (PCP), the Appellant's medical condition results in progressive muscle weakness. She also suffers from sleep apnea secondary to respiratory muscle weakness for which she receives breathing treatments with a ventilator. Her strengths include excellent computer skills, a graduate degree in Social Work, and individual resourcefulness. She also runs a life coaching business out of her home. The Appellant's PCP also provides for 11 hours per day of Medicaid-funded personal care assistance. (*Exhibit; Attachment B; p. 3 of 18*)
4. According to the ██████████, PCP Periodic Review, the Appellant is experiencing increased pain; adaptive equipment is discussed at this time. (*Exhibit 1; Attachment B; p. 11 of 18*)
5. The ██████████, PCP Annual Review provides, in pertinent part, as follows:

"This periodic review is being completed as ██████ requested an Amendment to the PCP in order to clarify the specific details of an occupational therapy/health and safety goal. She reports that the details were discussed at the meeting, but were not specified in the content of the meeting. The Amendment will be as follows in the Occupational Therapy goals and in the documentation: to acquire a voice activated environmental control system which would enable ██████ to access the telephone, adjust temperature, hospital bed position, and manage lights and other aspects of her environment independently to maintain health and safety.

██████ has had stable health over the past 3 months. She recently got cataract surgery and is able to see things that she has not been able to see for a long time. She is very excited about this. ██████ continues to receive 11 hours of personal care assistance per day and is supported by her partner. She has not needed to work with the CSTS RN but met with her yesterday as there is a new RN on Team 3. She continues to work very closely with the CSTS Occupational Therapist. ██████ also continues to do Life Coaching and enjoys it, she is also an Independent Facilitator for PCPs."

" . . . "

"Quotes for all desired modifications, environmental controls, and wheelchair cushion were submitted by OTR. Wheelchair cushion

The thermostat control is necessary for ██████████ to be able to easily regulate her body temperature. ██████████ body chills easily due to poor circulation and lack of muscle tone which causes her muscles to quickly become fatigued. Being able to quickly and easily regulate her home temperature will help keep the body temperature stable which will in turn decrease her muscle fatigue.

The hospital bed control is necessary for ██████████ in order to provide her the ability to reposition her body frequently which will decrease the risk of skin breakdown. Also frequent repositioning will help to prevent pain ██████████ joints.”

“ . . . ”

(Exhibit 2; pp. 38-39)

9. The Appellant is supplied with a service dog named ██████████. Concerning what ██████████ can and cannot do with respect to assisting the Appellant, ██████████, ██████████, ██████████, writes in a January 5, 2009, letter as follows:

“.. ██████████ is a Labrador Retriever mix that has been trained to assist ██████████ with retrieving dropped items, retrieving the phone, and providing companionship, along with many other specialized tasks. ██████████ has recently been re-certified by our organization and has full public access wherever ██████████ goes.

██████████ contacted me this morning, prior to her hearing before you tomorrow, with questions about the extent of training that is possible with service dogs in general and specifically ██████████. The three tasks that she needs additional help with currently include dialing the phone, operating the control unit on her bed and adjusting the thermostat in her home. At this time, I don't know that any of our dogs would have the motor capabilities to perform these tasks themselves. We would be happy to work with ██████████ in terms of the training and technology that would help ██████████ to be able to assist with these things for her, but again, there is only so much that the dogs are able to do.”

“ . . . ”

(Exhibit 2; p. 37)

10. The written denial of the environmental control system was issued to the Appellant on ██████████. (Exhibit 1; Attachment C; p. 2 of 9)

11. On ██████████, the Appellant filed her Request for Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Title XIX of the Social Security Act, enacted in 1965, authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services.

42 CFR 430.0

The State plan is a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department. The State plan contains all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation (FFP) in the State program.

42 CFR 430.10

Section 1915(b) of the Social Security Act provides:

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection (s) of this section) (other than sections 1396a(a)(15), 1396a(bb), and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State...

The State of Michigan has opted to simultaneously utilize the authorities of the 1915(b) and 1915(c) programs to provide a continuum of services to disabled and/or elderly populations. Under approval from the Centers for Medicare and Medicaid Services (CMS), the Department operates a section 1915(b) Medicaid Managed Specialty Services and Support program waiver in conjunction with a section 1915(c) Habilitation and Supports Waiver. ██████████ contracts with the Michigan Department of Community Health to provide Medicaid State Plan Specialty Supports and Services.

My jurisdiction in this case is restricted to a determination of whether the Department has appropriately denied the Appellant's request for a voice-activated environmental control system.

Because different policy applies, depending on how the requested equipment is classified, an initial determination must be made as to whether the voice-activated environmental control system is either an environmental modification or enhanced medical equipment or both.

Based on a preponderance of the evidence presented, I conclude the voice-activated control system is properly classified as "enhanced medical equipment." The voice-activated environmental control system consists of a "device" installed in the home that "controls" either a physical item such as a bed or curtains, or the thermostat, which regulates the environmental temperature. Furthermore, the testimony presented by the Appellant's witnesses, and not effectively contradicted by the Department, is that the voice-activated control system may be completely removed from the physical structure, transported and re-installed in another structure. It is not permanently affixed to the real property, and is therefore not properly classified as a "modification" to the real estate, which either could not be easily removed, or remains permanently affixed to the physical structure.

The Appellant is enrolled in the Habilitation and Supports Waiver (HSW). Enhanced Medical Equipment is a covered service. Section 15 of the Medicaid Provider Manual, Mental Health/Substance Abuse, provides, in pertinent part, as follows:

SECTION 15 – HABILITATION SUPPORTS WAIVER FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

Beneficiaries with developmental disabilities may be enrolled in Michigan's Habilitation Supports Waiver (HSW) and receive the supports and services as defined in this section. HSW beneficiaries may also receive other Medicaid state plan or additional/B3 services. A HSW beneficiary must receive at least one HSW service per month in order to retain eligibility. Medical necessity criteria should be used in determining the amount, duration, and scope of services and supports to be used. The beneficiary's services and supports that are to be provided under the auspices of the PIHP must be specified in his individual plan of services developed through the person-centered planning process.

HSW beneficiaries must be enrolled through the MDCH enrollment process completed by the PIHP. The enrollment process must include annual verification that the beneficiary:

- Has a developmental disability (as defined by Michigan law);
- Is Medicaid-eligible;
- Is residing in a community setting;
- If not for HSW services, would require ICF/MR level of care services; and
- Chooses to participate in the HSW in lieu of ICF/MR services.

The enrollment process also includes confirmation of changes in the beneficiary's enrollment status, including termination from the waiver, changes of residence requiring transfer of the waiver to another PIHP, and death. Termination from the HSW may occur when the beneficiary no longer meets one or more of the eligibility criteria specified above as determined by the PIHP, or does not receive at least one HSW service per month, or withdraws from the program voluntarily, or dies. Instructions for beneficiary enrollments and annual re-certification may be obtained from the MDCH Bureau of Community Mental Health Services. (Refer to the Directory Appendix for contact information.)

The PIHP shall use value purchasing for HSW services and supports. The PIHP shall assist beneficiaries to examine their first- and third-party resources to pursue all reimbursements to which they may be entitled, and to make use of other community resources for non-PIHP covered activities, supports or services.

Reimbursement for services rendered under the HSW is included in the PIHP capitation rate.

15.1 WAIVER SUPPORTS AND SERVICES (specific to Enhanced Medical Equipment)

Enhanced Medical Equipment and Supplies

Enhanced medical equipment and supplies include devices, supplies, controls, or appliances that are not available under regular Medicaid coverage or through other insurances (Refer to the Medical Supplier Chapter of this manual for more information about Medicaid-covered equipment and supplies).

All enhanced medical equipment and supplies must be specified in the plan of service, and must enable the beneficiary to increase his abilities to perform activities of daily living; or to perceive, control, or communicate with the environment. Items that are not of direct medical or remedial benefit, or that are considered to be experimental to the beneficiary, are excluded from coverage.

- "Direct medical or remedial" benefit is a prescribed specialized treatment and its associated equipment or environmental accessibility adaptation that are essential to the implementation of the individual plan of service.
- "Experimental" means that the validity of the use of the item has not been supported in one or more studies in a refereed professional journal.

The plan must document that, as a result of the treatment and its associated equipment or adaptation, institutionalization of the beneficiary will be prevented. There must be documented evidence that the item is the most cost-effective alternative to meet the beneficiary's need. All items must be ordered on a prescription as defined in the General Information Section of this chapter. An order is valid one year from the date it was signed. This coverage includes:

- Adaptations to vehicles;
- Items necessary for life support;
- Ancillary supplies and equipment necessary for proper functioning of such items; and
- Durable and non-durable medical equipment not available under the Medicaid state plan.

**Michigan Department of Community Health
Medicaid Provider Manual
Mental Health/Substance Abuse
Version Date: January 1, 2009
Pages 77-78**

Contrary to the Department's assertion that the voice-activated control system has never been a "part" of the plan of service, the Appellant's ██████████ and subsequent plans of service all reference the Appellant's desire for a voice-activated environmental control system.

The Appellant has credibly established, by a preponderance of the evidence, that her spinal muscular atrophy is a degenerative neuromuscular condition that has now progressed to the point where she is no longer capable of using her upper extremities to perform certain tasks. Those tasks include using her hands or fingers to push buttons on a telephone, or to use her hands or fingers to adjust controls that re-configure her bed. The Appellant also credibly testified she is no longer capable of adjusting the thermostat, or opening and closing the curtains, both of which interfere with her ability to control the internal temperature of her home or to monitor the amount of light entering her home from the outside.

The medical documentation corroborates the Appellant's claim that she has limited or no use of her upper extremities, including her hands and fingers; the medical evidence also establishes that fluctuating internal temperatures cause her to experience acute episodic muscle tension and spasms, which detrimentally affect her overall health status. The medical documentation also establishes these issues must be immediately addressed, so that the Appellant may remain healthy, and so that she may maximize her ability to live as independently as possible. *(Reference Exhibit 2)*

██████████ asserts that fluctuating internal temperature conditions, bed adjustments, opening and closing curtains, using a telephone, are all tasks that can be adequately addressed by the Appellant's partner, or through an increase in either personal care assistance or a Personal Emergency Response System (PERS), or both.

Yet, ██████████ acknowledges never discussing these options with the Appellant prior to hearing.

Furthermore, this position fails to consider and comprehend that a PERS or increase in personal care assistance does not further the Appellant's ability to live as independently as possible. ██████████ assertion does not adequately consider how the Appellant's needs may be addressed during times when she is alone, which the evidence suggests is on a daily basis during the hours of 11:00 AM and 4:00 PM. ██████████ reliance on the Appellant's partner to provide any and all care during these times, is unrealistic, and does not contemplate that the Appellant's partner, as an unpaid care giver, may also need a respite from caring for the Appellant's comprehensive needs.

██████████ Occupational Therapists suggest that, as a measure of addressing internal temperature issues, radiant heat be installed in the Appellant's bathroom, as it provides immediate warmth when turned on without the health risks attendant to her current system (forced air). ██████████ provided no evidence, however, that installing such a system would be more or less expensive than the voice-activated control system; thus, installation of radiant heat has not been established as a more cost-effective measure of addressing the Appellant's medical needs in this context. (*Exhibit 1; Attachment E; p. 2 of 3*)

Current policy provides for enhanced medical equipment, if such equipment enables the beneficiary to increase her abilities to perform activities of daily living, or if the equipment enables the beneficiary to perceive, control, or communicate with the environment.

Based on a preponderance of the medical, testimonial and documentary evidence presented, I conclude the voice-activated control system will enable the Appellant to increase her ability to control internal temperatures through activation of thermostat controls; it will enable her to open and close curtains in order to control interior light conditions; the voice-activated control system will enable the Appellant to adjust her bed, thereby alleviating the pain associated with remaining in a constant position.

Based on a preponderance of the evidence presented, I conclude the voice-activated control system is an item that is of direct medical or remedial benefit, and that is not experimental in nature. I further conclude the voice-activated environmental control system is a prescribed and medically necessary piece of equipment/environmental accessibility adaptation that is essential to the implementation of the Appellant's plan of service, which ultimately, must be focused on maximizing safety and providing the Appellant maximum opportunity to live independently while not under the care of either her partner or paid care givers.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide that ██████████ denial of Appellant's request for a voice-activated environmental control system is in error.

IT IS THEREFORE ORDERED that:

[REDACTED]
Docket No. 2009-3979 CMH
Hearing Decision & Order

[REDACTED] denial is REVERSED.

Stephen B. Goldstein
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 3/18/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules for the Department of Community Health will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.





